

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 599 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJ.

Versus

SUBHASHCHANDRA RAGHURAMBHAI

Appearance:

PUBLIC PROSECUTOR for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE K.R.VYAS
Date of decision: 21/06/1999

ORAL JUDGEMENT

Per: K.R.Vyas,J.

1. The State of Gujarat has filed this appeal
challenging the judgment and order passed in Sessions
Case No. 42 of 1991 by the learned Assistant Sessions
Judge, Surendranagar, acquitting the respondent- accused
for the alleged offences punishable under sections 363

and 376 of Indian Penal Code. The learned Assistant Sessions Judge, however, convicted the respondent-accused of the offence punishable under section 506(2) of IPC and sentenced to suffer 3 years R.I. and a fine of Rs. 2500/-, in default, to undergo S.I. for three weeks. It may be state that the respondent- accused preferred an appeal being Appeal No.9 of 1991 before the Sessions Court,Surendranagar challenging his conviction under section 506(2) of IPC. The learned Sessions Judge, Surendranagar, by his judgment and order dated 14.12.1994, allowed the said appeal and set aside the judgment and order passed against him by the learned Assistant Sessions Judge, Surendranagar.

2. Sarojben, the prosecutrix in the present case filed a complaint on 19.9.1990 before the District Superintendent of Police, Surendranagar wherein it was inter alia alleged that while she was proceeding with her three year minor daughter from her father's house to village Sara and waiting at Limdi bus-stand,the respondent came there and after giving threat of killing her minor daughter, compelled her to board a rickshaw. It is alleged that the respondent took her to guest house and committed rape on her against her will at the point of knife. Thereafter, the respondent used to demand money as well as ornaments from her and also used to pressurize her to leave her husband. The prosecutrix, out of fear, could not inform her relatives.The said complaint was registered by the Office of the District Superintendent of Police and the Police Sub Inspector Limdi was instructed to investigate into the allegations. The concerned officer of Limdi Police Station, after recording statements of witnesses,submitted chargesheet against the respondent in the Court of Judicial Magistrate, First Class, Limdi, who ultimately committed the case to the Sessions Court, Surendranagar as the offence involved was exclusively triable by the Court of Sessions. The learned Assistant Sessions Judge framed charges at Ex.3 against the respondent to which he pleaded not guilty and claimed to be tried. The learned Assistant Sessions Judge,after appreciating the evidence on record, at the end of the trial, ultimately found that the prosecution has failed to prove the charge under section 363 and 376 of IPC and, therefore, passed an order of acquittal. However, as stated above, convicted the respondent for offence punishable under section 506(2) of IPC.

3. Mr.K.P.Raval, learned APP,after having taken us through the evidence of prosecutrix, submitted that there is no reason to disbelieve the evidence of prosecutrix

especially when her evidence is natural and there is no reason for her to falsely involve the respondent. In the submission of Mr.Raval, the so-called contradictions in the said evidence are quite minor in nature and, therefore, no importance can be attached to the same. Having clearly gone through the evidence of PW 5, we are of the view that the prosecution case solely rests on the evidence of prosecutrix Sarojben, PW 3, Ex.7. The evidence of supporting witness Karsan Jivraj, PW 2 is of no help to the prosecution inasmuch as he has been introduced by the prosecution just with a view to support the prosecutrix. This is clear from the fact that the prosecutrix, in her complaint, does not mention the presence of Karsanbhai at the time of incident. Apart from the same, there are material contradictions in the evidence of Karsan Jivraj which, we will point out, would render his presence at the time of the incident doubtful. Similarly, the evidence of Labhuprasad Popatdas, PW 4, Ex.10, the husband of the prosecutrix will not help the prosecution inasmuch as he being the husband of the prosecutrix, naturally an interested witness and apart from the same, his evidence is quite unnatural and not trustworthy. The incident in question had taken place on 16.11.1989 at about 5.00 p.m. when the prosecutrix Sarojben was waiting at Limdi bus stand for the bus to come to take her to village Sara, when according to her, Karsan Jivraj alias Kachra Jivraj, PW2 came and informed that the respondent is waiting for her. Accordingly, the prosecutrix came out of the bus stand and met the respondent. According to her, the respondent took her minor daughter and kept her bag in the dicky of the scooter and thereafter all the three sat on the scooter and Karsan drove the scooter and took them to the temple of village Arnej. They returned to Limdi town and stayed in Shakti Guest House by hiring a room. There were three cots in the room. At about 12.00 or 12.15 a.m., the respondent wrote two letters; one for taking divorce from her husband and another to marry the respondent. The respondent wanted her to sign. On being denied, she was beaten by the respondent and he also gave her threat to kill her daughter. The respondent thereafter asked Karsan to go to bed and then he committed rape on her by using force. In the morning, she took bath and thereafter the respondent as well as witness Kacharabhai left for Limdi bus stand. Thereafter, according to the prosecutrix, the respondent used to address letters and give threats to her. After reading the evidence of the prosecutrix, we are of the view that her evidence is not natural and is far from the truth. Admittedly, there is a time gap of one year between the date of offence and the filing of the

complaint. If at all the incident had taken place as alleged by her, the natural conduct on her part as well as her husband Labhuprasad would have been to file a complaint immediately. The reason given by the prosecutrix for not taking prompt action of filing complaint is the threat given by the respondent which is not acceptable to us. Prima facie, it appears to us that she was a willing party. Otherwise, she had number of opportunities to run away from the respondent and/or could have shouted for help. The fact that she did not file a complaint immediately itself is a strongest circumstance to be used against her. This fact, itself, in our opinion, is sufficient for us to hold that she concocted the entire incident with a view to falsely involve the respondent. In the complaint, she specifically alleged that the respondent came and compelled her to sit in the rickshaw and thereafter both had gone to the guest house, while in her evidence, she introduced Karsan Jivraj, PW 2 for the first time and stated that Karsan Jivraj took her from bus stand where the respondent was waiting and thereafter all the three went to village Arnej and again returned to Limdi and stayed in a guest house. Thus, she changed the entire story narrated in the complaint and, therefore, her evidence creates doubt about the manner in which the incident had taken place. Similarly, we would also not like to give any importance to the evidence of Karsan Jivraj, as in our opinion, it is obvious that he has been subsequently introduced as a witness. The fact that the prosecution has not at all mentioned his presence in the complaint, it is sufficient for us to hold that he was not present at the time of the incident. In view of the fact that this witness Karsan Jivraj, in his evidence, has not stated anything about the respondent insisting prosecutrix to sign two letters, one of divorce from her husband and another regarding marriage with the respondent and on her refusal, she was beaten by the respondent, would also create a doubt about his presence at the time of alleged incident in the guest house. Karsan Jivraj is contradicted with his police statement on material aspects when the alleged rape was committed on the prosecutrix.

4. In view of the aforesaid circumstances, it is not safe to rely upon the evidence of Karsan Jivraj. Similarly, we are also not impressed by the evidence of Labhuprasad, the husband of the prosecutrix. He has given a parrot-like version. He being the husband of the prosecutrix, the natural conduct on his part would have been to inform the police no sooner he came to know about the incident. It has come in the evidence that he was

informed about the incident by the prosecutrix on the next day. The only explanation he has tendered for not filing the complaint immediately was the so-called threat given by the respondent. Therefore, it is not possible for us to accept the explanation. In any case, filing of complaint after an year itself is a ground which will create doubt about the genuineness of the prosecution case. In this view of the matter, we are clearly of the view that the evidence of the prosecutrix does not get corroboration from other witnesses. In fact, the evidence of prosecutrix itself is unnatural and not trustworthy and, therefore, it is not possible for us to accept her evidence. In our opinion, the learned Assistant Sessions Judge was perfectly justified in acquitting the respondent- accused of the offences punishable under sections 363 and 376 of IPC. Suffice it to say, we are in total agreement with the findings of the learned Assistant Sessions Judge. Therefore, we do not see any merit in this appeal. Hence dismissed.

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